IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

OP.No. 26472 of 2000(S)

OA.1433/1997 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONER:

P.K.Girishan, Inspector of Incometax, Incometax Office,
Division III, Ernakulam.

BY ADV. SRI.P.BALAKRISHNAN (E)

RESPONDENTS:
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1. Central Administrative Tribunal, Ernakulam Bench, Ernakulam.

2. The Chief Commissioner of Incometax, Central Revenue Buildings, I.S. Press Road, Cochin 682 018.

3. The Secretary, Central Board of Direct Taxes, North Block, New Delhi.

BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR
SRI.JOHN VARGHESE, ASSISTANT SG

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 21/06/2007 ALONG WITH OP NO. 28173 OF 2000 THE COURT ON 27/6/2007 DELIVERED THE FOLLOWING:

OP 26472/00

APPENDIX

PETITIONER'S EXTS:

Ext.P1 true copy of the Original Application in OA 1433/1997 filed before the 1st respondent with its annexures.

Ext.P2 true copy of order dated 17th July, 2000 of the 1st respondent in OA No.1433/97

Ext.P3 true copy of the reply statement dated 12th March, 1998 filed in OA No.1433/97 by the 2nd and 3rd respondents with its Annexures.

K.S.Radhakrishnan
&
Antony Dominic, JJ.
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O.P.Nos.26472 & 28173 of 2000
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Dated this the 27th day of June, 2007.

JUDGMENT

Antony Dominic,J.

These Original Petitions have been filed seeking to quash orders passed by the Central Administrative Tribunal, Ernakulam Bench in O.A.No.1433 of 1997 and O.A.No.1434 of 1997. Petitioners herein filed the aforesaid O.As. challenging the memos dated 23.5.1997 issued by the first respondent herein and to direct refixation of their pay as Tax Assistant with effect from 1.12.1982 by stepping up their pay to that of their compared junior. Consequential reliefs were also sought for.

2. Facts which led to the filing of the O.As. are that while working as Upper Division Clerks in the income-tax Department, the petitioners were promoted to the post of Tax Assistant with effect from 27.11.1979 and their pay was fixed at Rs.485/- per month. Vide OM

No.7(52)/E-III/78 dated 5.5.1979, Government of India ordered to identify 10% of total number of posts of Upper Division Clerks which involved handling cases of complex nature requiring deep study and competence to deal with those cases. It was ordered that the Upper Division Clerks selected against those identified posts will be granted special pay of Rs.35/- per month. The said O.M. Dated 5.5.1979 was communicated by the Government of India, Department of expenditure by their O.M. dated 1.4.1980 and was implemented in the first respondent's office by order dated 21st May, 1980. One of the beneficiaries of the said order was Smt. Marykutty, who was then working as Upper Division Clerk and she was granted special pay from 15.6.1979. Smt. Marykutty, who admittedly junior to the petitioners in the category of Upper Division Clerk, was thereafter promoted as Tax Assistant with effect from 1.12.1982. On her promotion, her pay was fixed reckoning the pay she was drawing as Upper Division Clerk including special pay of Rs.35/- and as a result thereof, her pay was fixed at Rs.515/- per month.

3. This obviously resulted in a situation that a junior to the petitioners was receiving higher pay than their seniors and claiming stepping up of her pay, petitioners represented to the authorities. Representations so made were finally rejected vide order dated

23.5.1997. They were informed that the benefit of the O.M. which resulted in the grant of special pay to Smt.Marykutty cound not be acceded to the senior Upper Division Clerks, who were promoted between 5.5.1979 and 21.5.1980 in Kerala Charge. This is stated to be a reason for lesser pay drawn by the petitioners and they were held to be ineligiible for stepping up of their pay. The orders thus rejecting their requests for stepping up of their pay were challenged in the O.As. filed by the petitioners before the Central Administrative Tribunal and by a common order dated 17th July, 2000, their applications were rejected.

4. We have heard counsel for the petitioners and respondents. It is the admitted case that Smt.Marykutty was the beneficiary of the special pay and as a result thereof, in spite of the fact that she was far junior to the petitioners and promoted to the category of Tax Assistant only with effect from 1.12.1982, she was drawing Rs.515/- per month as against Rs.485/- drawn by the petitioners, who were seniors in the lower category of Upper Division Clerks and promoted to the category of Tax Assistant with effect from 27.11.1979. It may be that only 10% of the Upper Division Clerks were chosen for conferment of the special pay as a result of arduous nature of the duties discharged by them. The nature of duties discharged by them may be a valid reason for

declining special pay to others working in the category of Upper Division Clerk and as held by the Apex Court in the case of **Chief Commissioner of Income Tax (Administration), Bangalore** v. **V.K. Gururaj and others** – (1996) 33 Administrative Tribunals Cases 269, since they do not discharge special duties, though seniors, they cannot claim the benefit of special pay.

5. But however, once the Upper Division Clerk who has been granted special pay is promoted as Tax Assistant and his pay is fixed giving credit to the special pay also, and consequently if seniors in the category of Tax Assistant are drawing lesser pay, that situation certainly calls for remedial action. Such situations are taken care of by the provisions contained in FR 22. This Rule provides for stepping up of pay of the senior to match that of his junior provided the conditions specified in that behalf are satisfied.

6. In an identical situation arising out of the implementation of the O.M. Dated 5.5.1979 of the Government of India,the Hon'ble Supreme Court in the case of **Union of India and Others** v. **P.Jagdish and Others** – 1997(3) S.C.C. (L&S) 176 posed the following point for consideration:

> "Whether the respondents can claim for stepping up of their pay in the promoted cadre of Head Clerks when their juniors who were later promoted were fixed up at a

higher slab in the cadre of Head Clerks taking into account the special pay which they are drawing in the lower category of Senior Clerks."

This question has been answered in paragraph 7 of the judgment and it is extracted below for reference:

"So far as the second question is concerned, it depends upon the applicability of the principle of stepping up. Admittedly, the respondents had been promoted earlier to the category of Head Clerks and some of their juniors who were continuing as Senior Clerks against the identified posts carrying special pay of Rs.35 per month on being promoted to the post of Head clerks later than the respondents got their pay fixed at a higher level than the respondents. Under the provisions of Fundamental Rules to remove the anomaly of a government servant promoted or appointed to a higher post earlier drawn a lower rate of pay in that post than another government servant junior to him in the lower grade and promoted or appointed subsequently to the higher post, the principle of stepping up of the pay is applied. In such cases the pay of the senior officer in the higher post is required to be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up is required to be done with effect from the date of promotion or appointment of the junior officer. On refixation of the pay of the pay of the senior officer by applying the principle of stepping up, the next increment of the said officer would

be drawn on completion of the requisite qualifying service with effect from the date of the refixation of pay. This principle becomes applicable when the junior officer and the senior officer belong to the same category and the post from which they have been promoted and in the promoted cadre the junior officer on being promoted later than the senior officer gets a higher pay. This being the principle of stepping up contained in the Fundamental Rules and admittedly the respondents being senior to several other Senior Clerks and the respondents having been promoted earlier than many of their juniors who were promoted later to the post of Head Clerks, the principle of stepping up should be made applicable to the respondents with effect from the date their juniors in the erstwhile cadre of Senior Clerks get promoted to the cadre of Head Clerks and their pay was fixed on a higher slab than that of the respondents. The stepping up should be done in such a way that the anomaly of juniors getting higher salary than the seniors in the promoted category of Head Clerk would be removed and the pay of the seniors like the respondents would be stepped up to a figure equal to the pay as fixed for their junior officer in the higher post of Head Clerk."

7. Following the judgment in the above case, a Division Bench of this Court in the case of **Kamala Devi** v. **K.S.F.E. Ltd** – 2002(1) K.L.T. 157 to which one of us (Radhakrishnan,J.) was a party, held

that a case where a junior drawing higher pay than her senior is one of plain discrimination and that the senior is entitled to have his pay stepped up with effect from the date of his junior starting to draw higher pay.

8. The situation in this case is identical and the law laid down by the Supreme Court applies to this case in full force. In that view of the matter, we are of the view that the petitioners are entitled to the benefit of stepping up of their pay and have it fixed as that of their juniors. The Tribunal did not appreciate the contentions properly and erred in rejecting their claims.

9. As we have already noticed, strictly applying the provisions of the Rule, stepping up of the pay should be with effect from 1.12.1982, when the junior to the petitioner was promoted as Tax Assistant. However, the petitioners approached the Tribunal only in 1997 and we are informed that both of them are now retired from service as well. Taking into account these aspects, we feel it appropriate to order that their pay shall be stepped up applying FR 22 with effect from November, 1997 when they made applications before the Tribunal and should be paid the consequential benefits. Needless to say that taking into account the pay as refixed, pensionary and other benefits also shall be reworked out and paid.

Accordingly,Exts.P2 orders of the Tribunal are quashed and the Original Petitions will stand allowed, without any order as to costs.

K.S.Radhakrishnan,
Judge.

Antony Dominic,
Judge.

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